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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

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COMMENTS OF AMERITECH NEW MEDIA ENTERPRISES, INC.

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Ameritech New Media Enterprises, Inc. ("Ameritech New Media"), respectfully offers the following three comments on the Fourth Further Notice of Proposed Rulemaking ("Fourth NPRM") and Third Notice of Inquiry ("Third NOI") released in this docket on August 9, 1995.

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## I.

TO THE EXTENT ADVANCED TELEVISION SPECTRUM IS ALLOCATED FREE OF CHARGE AND ALLOWED TO BE USED TO PROVIDE SERVICES OTHER THAN FREE, OVER-THE-AIR HIGH DEFINITION BROADCAST TELEVISION PROGRAMMING, ELIGIBILITY FOR USE OF THAT SPECTRUM SHOULD NOT BE LIMITED TO EXISTING BROADCASTERS.

When spectrum for Advanced Television ("ATV") first was allocated, the Commission decided to limit initial eligibility to existing broadcasters.<sup>1</sup> The Commission offered a variety of reasons for this decision,<sup>2</sup> but much of the justification came down to (a) the scarcity of available spectrum, and (b) the Commission's view of the importance of a universal, free, over-the-air television service in our democratic society. The Commission reaffirms this conclusion in the NPRM.<sup>3</sup>

The Commission reaffirms two additional points, as well. First, the Commission says that "broadcasters would use this spectrum for free over-the-air broadcast service; therefore, it cannot be auctioned under Section

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<sup>1</sup> NPRM at par. 25.

<sup>2</sup> NPRM at par. 26.

<sup>3</sup> NPRM at par. 27.

309(j)).”<sup>4</sup> Second, the Commission says that “the ATV system is capable of nonbroadcast uses that are nonvideo and/or subscription-based in nature.”<sup>5</sup>

The upshot is that one who wants to compete with an existing broadcaster is not eligible for ATV spectrum, but instead must acquire necessary spectrum at a price from some other source. Existing broadcasters, on the other hand, not only have exclusive eligibility to the ATV spectrum used to provide a competing service, but get the spectrum free of charge as well. This will not support the Commission’s goals of promoting competition and diversity of speakers. Moreover, if the services to be provided using ATV spectrum are not improvements to free, over-the-air broadcast television services, then existing broadcasters hold no unique qualification which justify them being the only entities eligible for the spectrum.

Some of the Commissioners seem to recognize the unfairness of a broadcaster having exclusive and free access to ATV spectrum that is used to compete with others who must pay for their spectrum. For example, Commissioner Quello said in his Separate Statement that:

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<sup>4</sup> NPRM at par. 31.

<sup>5</sup> NPRM at par. 23. Even though the ATV system has this capability and, presumably will be used at least to some degree in this manner, the Commission nevertheless concludes that it is “not creating a new service ... .” NPRM at par. 28.

In my opinion, current broadcast licensees who undergo the expense and risks of implementing HDTV and compression techniques with their assigned frequencies should be entitled to use their new channels to improve and expand free over-the-air service. If broadcasters are allowed to use some of the capacity for non-broadcast subscription services, broadcasters should pay reasonable spectrum fees.<sup>6</sup>

Likewise, Commissioner Barrett said:

Yet, if we ultimately decide to allow fully flexible use of the spectrum, I would have to question our original rationale for limiting initial eligibility to existing broadcasters ...<sup>7</sup>

Commissioner Chong echoed much of the same sentiments:

Should a broadcaster desire to use its new ATV spectrum for a primary purpose other than free broadcast, I would ask whether such ATV spectrum ought to be given without charge to someone who is not committed to free, over-the-air broadcasting.<sup>8</sup>

Ameritech New Media has the same concern. If ATV spectrum is available only to existing broadcasters and is available to them at no charge, then that spectrum should be used to provide free, over-the-air broadcasting and should not be available for use in providing non-broadcast subscription services which compete with services offered by others who are not eligible

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<sup>6</sup> NPRM, Separate Statement of Commissioner James H. Quello at p. 2.

<sup>7</sup> NPRM, Separate Statement of Commissioner Andrew C. Barrett at p. 2.

<sup>8</sup> NPRM, Separate Statement of Commissioner Rachelle Chong at p. 2.

for ATV spectrum and who must pay for the spectrum they require to provide the competing service. Conversely, if the Commission is going to allow free ATV spectrum to be used for non-broadcast subscription services, then non-broadcasters should be eligible for that spectrum.

## II.

### **BROADCASTERS SHOULD NOT BE ALLOWED TO INDEFINITELY RETAIN FREE ALLOTMENTS OF BOTH ATV SPECTRUM AND NATIONAL TELEVISION SYSTEM COMMITTEE SPECTRUM.**

The NPRM reaffirms the Commission's earlier decision "that when ATV becomes the prevalent medium, [broadcasters] will be required to surrender a 6 Mhz channel and cease broadcasting in [National Television System Committee] NTSC [spectrum]."<sup>9</sup> This is a reasonable proposal and Ameritech New Media supports it. There is no legitimate reason to allow broadcast entities to indefinitely retain free channel allotments for NTSC and ATV, particularly when NTSC broadcasting ceases at the end of the transition period. If ATV broadcasters are not required to relinquish a 6 Mhz channel, they potentially could use it to provide non-broadcast subscription services and that would be unreasonable for the reasons cited in Section I, supra. Recovery of this spectrum at the end of the transition period is reasonable.

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<sup>9</sup> NPRM at par. 55.

### III.

MUST-CARRY REQUIREMENTS SHOULD NOT APPLY TO ANY SERVICES PROVIDED OVER ATV CHANNELS OTHER THAN FREE, OVER-THE-AIR BROADCASTING AND SHOULD NOT APPLY TO PROGRAMMING DUPLICATED ON NTSC CHANNELS.

Ameritech New Media believes that ATV spectrum should be limited for use in providing free, over-the-air broadcasting. However, to the extent the Commission allows that spectrum to be used for non-broadcast subscription programming or broadcast-related data transmission, that programming should not be included within the Commission's must-carry requirements. After all, the must-carry rules were intended to protect the availability of free, over-the-air broadcasting to customers who pay for cable service and to ensure that cable operators would not insist on remuneration for carrying over-the-air broadcasting when the broadcaster did not receive any revenue from the cable customer. Neither rationale is applicable where non-broadcast subscription programming or broadcast-related data transmission are involved. Therefore, the Commission should make clear that its must-carry rules do not apply with respect to non-broadcast subscription programming or broadcast-related data transmission over ATV spectrum.

In cases of simulcasting, it would not be reasonable to apply the must-carry rules to both the ATV signal and the NTSC signal. That could waste spectrum. Nor would it be reasonable during the NTSC to ATV transition

period to require carriage of a digital, high-definition television signal in an analog basic tier of services in lieu of the simulcast NTSC signal. Within the time limits prescribed by the Commission, the transition from NTSC carriage to ATV should be at the discretion of the cable operator who is responsible for managing individual ATV channel availability and system upgrades to accommodate the new signals.

IV.

CONCLUSION

Ameritech New Media appreciates the opportunity to offer its comments in this important docket and asks that its comments be incorporated in the final rules adopted on the basis of the NPRM.

Respectfully submitted,

AMERITECH NEW MEDIA  
ENTERPRISES, INC.

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